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Case Nos: 1999-LHC-1048
1999-LHC-1184
2000-LHC-1395

OWCP Nos: 14-128603
14-129483
14-130199

In the Matter of

EDDIE C. SHAW,

Claimant,

v.

SEA-LAND SERVICES, INC.,

Employer,

and

CRAWFORD & COMPANY,

Carrier,

and

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS,

Party-in-Interest.

APPEARANCES: Eddie Shaw, *pro se*

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BEFORE: DONALD W. MOSSER
Administrative Law Judge

DECISION AND ORDER

This proceeding involves claims for workers' compensation benefits under the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. § 901 (the Act).

Following proper notice to all parties, a formal hearing was held on August 29, 2000 at Seattle, Washington. Exhibits of the parties were admitted in evidence pursuant to 20 C.F.R. § 702.338, and the parties were afforded the opportunity to present testimonial evidence and to file post-hearing briefs.

The findings of fact and conclusions of law set forth in this decision are based on my analysis of the entire record. Each exhibit and argument of the parties, although perhaps not specifically mentioned, has been carefully reviewed and thoughtfully considered. References to ALJX, DX, CX and EX pertain to exhibits of the administrative law judge, Director, claimant and employer/carrier, respectively. The transcript of the November 16, 1999 hearing is cited as "Tr." and by page number.

ISSUES

1. Whether Eddie Shaw is entitled to temporary total disability compensation under Section 8(b) of the Act for his loss of wages between March 23, 1988 and April 21, 1988 relating to stress;

2. Whether claimant is entitled to temporary total disability compensation under Section 8(b) of the Act for his

loss of wages between May 5, 1993 and October 1, 1993 because of his heart attack;

3. Whether Mr. Shaw is entitled to continuing permanent total disability compensation under Section 8(a) of the Act beginning on March 6, 1999 due to his kidney disease;

4. Whether the three claims involved in this case were timely filed; and,

5. Whether the claimant is entitled to medical benefits under Section 7 of the Act.

FINDINGS OF FACT

Background

Claimant, Eddie Shaw, is 54 years of age. He graduated from high school and received some vocational training in refrigeration. Claimant also has some college education. (EX 3).

Mr. Shaw began working for Sea-Land Services, Inc. (Sea-Land) in Oakland, California in 1977. (EX 3). He worked for about 3-1/2 years as an apprentice-welder, then left that job in 1981. (Tr. 68; EX 3). Claimant apparently was rehired by Sea-Land in Oakland for a short time, then was laid off work. In 1985, he transferred to Sea-Land's containerized shipping location in Tacoma, Washington, where he worked in maintenance until 1999. (Tr. 67-68; EX 3).

Three claims for compensation under the Act were filed by Mr. Shaw while he was employed at Sea-Land. Chronologically, the first involves loss of work due to stress in 1988. The second claim relates to a heart attack suffered by Mr. Shaw in 1993. The remaining claim is for the longshoreman's kidney disorder. These claims are the subject of this proceeding.

Stress Claim (OWCP No. 14-129483)

Mr. Shaw was absent from work at Sea-Land from March 23, 1988 to April 21, 1988. (EX 1, p. 1). The claimant testified before me that he missed work in 1988 because he was under stress due to harassment at Sea-Land. He stated his equipment or tools were being stolen and that he believed he was being

harassed essentially for racial reasons. He admitted, however, that he requested the time off for personal reasons, explaining that he did not believe he could reveal the actual reasons to management. (Tr. 68-71).

The claimant also testified that he started to see a psychologist because of the stressful situation. (Tr. 70). However, the only medical evidence in the record regarding this matter is a note of Dr. A. Wright of Group Health Cooperative of Puget Sound. This physician noted that Mr. Shaw visited him on March 22, 1988, on the first day of a leave of absence from work due to stress, essentially because he needed medical verification. Dr. Wright noted that he did not examine the claimant other than to take his blood pressure, which was elevated. He noted "stress, probable work related." (CX D2; DX A, F).

Mr. Shaw filed a Notice of Employee's Injury (Form LS-201) on March 22, 1988, on which he alleged the loss of work was related to mental injury related to work stress that he suffered between May 28, 1987 and March 22, 1988. (EX 1, p. 6). Sea-Land filed a Notice of Controversion of Right to Compensation (Form LS-207) on April 23, 1988, in which it was explained that Mr. Shaw's condition did not arise out of his employment as he was granted a leave of absence on March 17, 1988 for personal problems. (EX 1, p. 5). In the Employer's First Report of Injury or Occupational Injury (Form LS-202) dated April 26, 1988, the employer reported that it received knowledge of the injury on March 24, 1988 by a telephone call from Group Health that Mr. Shaw had requested a leave of absence because he was having "personal problems at home." (EX 1, p. 4). Mr. Shaw filed his claim for compensation under the Act (Form LS-203) on December 4, 1998, although he also noted on the claim that he first requested compensation on March 23, 1988. (EX 1, p. 1). The district director opened a claim file relating to OWCP No. 14-129483 on December 7, 1998. (DX H). The district director referred this claim to the Office of Administrative Law Judges on March 8, 1999. (DX H). Sea-Land filed another Employer's First Report of Injury (Form LS-202) on March 19, 1999, in which the injury was again described as a 30-day request for leave due to stress associated with personal problems at home. (EX 1, p. 2).

Sea-Land did not pay Mr. Shaw any compensation for the wages he lost between March 23, 1988 and April 21, 1988. Mr.

Shaw's average weekly wage for purposes of this period of time was $884.61. (Tr. 9).

Heart Claim (OWCP No. 14-128603)

Mr. Shaw suffered a heart attack while working for Sea-Land on May 5, 1993. Claimant testified that he was under stress at work at the time because there was an "urgent need" to make some repairs on containers. (Tr. 73). He experienced pain in his chest and arm and was unable to breathe. His supervisor, recognizing the claimant had suffered a heart attack, drove Mr. Shaw to the hospital. (Tr. 74). The emergency room physician, Donald D. Fletcher, D.O., noted that Mr. Shaw reported that he experienced chest pain while performing some heavy lifting of a refrigeration compressor on the docks for Sea-Land. The physician also listed the claimant's risk factors of coronary artery disease, including a 20 year history of cigarette smoking of one pack per day and 20 years of hypertension. He also noted a history of polycystic kidneys and hepatitis. The EKG was interpreted as showing an acute inferior wall myocardial infarction. (CX F1).

The examining physician during the claimant's hospitalization, William Lee, M.D., pertinently reported that the claimant had a history of hypertension for many years and also was diagnosed to have polycystic kidneys six months prior to the admission. He noted the patient was given nitroglycerin in the emergency room because of chest tightness and pressure and that an EKG was conducted. Mr. Shaw also experienced a few other episodes of chest pressure and tightness while in the hospital, which symptoms were relieved with nitroglycerin. The cardiac monitor showed no arrhythmias or further EKG changes. He remained stable in the cardiac unit for three days and subsequently was transferred to another unit for continued monitoring. Various tests were conducted during this admission, including an electrocardiogram. Mr. Shaw underwent a thallium scan on May 10, 1993, which was interpreted as normal. He was discharged on May 11, 1993 with the following diagnoses: (1) acute interior myocardial infarction; (2) hypertension; (3) left ventricular hypertrophy secondary to hypertension; (4) polycystic kidneys, bilateral; (5) renal insufficiency; and, (6) peptic ulcer disease by history. (CX F1, F2, F3; DX B; EX 5).

Claimant was evaluated by a cardiologist, Dr. Timothy K. Chung, on July 8, 1993. The purpose of the evaluation related

to the claimant's coronary artery disease and angina pectoris following his myocardial infarction on May 5, 1993. The pertinent history noted that Mr. Shaw apparently had been very healthy until about five years prior to his heart attack when he began to have a history of chest pain suggestive of angina. The physician listed the information regarding the claimant's hospitalization following his heart attack and reported he was surprised that the patient did not receive diagnostic cardiac catherization or coronary angiogram. (CX G2).

Mr. Shaw was again admitted to the hospital on July 27, 1993. The purpose of this admission was for diagnostic cardiac catherization and coronary angiography for evaluation of the claimant's unstable angina following his myocardial infarction. Pertinent other medical history included the patient's chronic renal failure due to polycystic kidneys, which Dr. Thomas Martin had previously evaluated. Dr. Martin also supervised the renal management associated with the heart catherization. Based on the test results, Mr. Shaw was advised to have angioplasty for management of a single vessel disease, probably responsible for the post-myocardial infarction and unstable angina. The recommendation was accepted and the procedure was completed by Dr. Chung on July 28, 1993 with successful opening of the vessel without complications. Following the procedure, the patient had no angina or other complications associated with the heart, but he had worsening of his renal function due to the contrast agent used in the heart catherization and for the angioplasty. His kidney condition required hospitalization for several days but he was finally discharged on August 1, 1993, when his test results showed stable readings. (CX G1).

The record also contains Dr. Martin's July 27, 1993 assessment of the claimant's renal failure which was requested by Dr. Chung. The physician pertinently noted that Mr. Shaw was known to have kidney disease and had been evaluated in the past for renal failure. Dr. Martin reported the patient had a very strong history of lupus and that Mr. Shaw's mother was on dialysis secondary to lupus. He stated that he was following the patient's possible renal failure status post the heart catherization. His assessment was that Mr. Shaw indeed had acute renal failure related to dye exposure for which Dr. Martin prescribed fluids, medication and treatment during the hospitalization. (CX H1).

Dr. Martin reported to Dr. Lee on August 18, 1993 that he had again examined Mr. Shaw for polycystic kidney disease and hypertension. He noted the history associated with the heart catherization, angioplasty and renal failure. Dr. Martin reported that since the claimant had been discharged from the hospital, he had no chest pressure and was undergoing a rehab program. The physician also noted that Mr. Shaw was to return to work on the first of October. He advised that the patient did well with the recent angioplasty and that he had started Mr. Shaw on prescription medicine for hypertension for which he would continue to monitor. (EX 11, p. 72).

The record also contains a return to work certificate from Dr. Chung dated October 5, 1993 in which he noted Mr. Shaw's care since July 8, 1993 and that the patient was to return to work on October 1, 1993 with no limitations. (EX 11, p. 73). The record also contains a more comprehensive report of Dr. Chung dated November 5, 1998, as well as the opinions of Drs. Sabine von Preyss Friedman and Peter Mohai, relating to Mr. Shaw's heart problems. These reports are later summarized in this decision. (EX 6, 13, 14).

Mr. Shaw indeed returned to work on October 1, 1993. He filed his claim for benefits pertaining to his loss of wages (Form LS-203) on July 28, 1998. (EX 2, p. 7). The district director opened the claim file relating to OWCP No. 14-128603 on August 20, 1998. (DX H). Sea-Land filed its first report of the injury (Form LS-202) on September 18, 1998. (EX 2, p. 8). It filed notices of controversion (Forms LS-207) on October 4, 1998 and October 13, 1998. (EX 2, pp. 9, 10). The district director referred this claim to the Office of Administrative Law Judges on February 17, 1999. (DX H).

Employer conceded that the applicable compensation rate for this injury is $721.14 per week. (Tr. 9). This concession obviously is based on the maximum average weekly wage and maximum compensation rate as determined by the U.S. Department of Labor for the time period October 1, 1992 through September 30, 1993.

Kidney Claim (OWCP No. 14-130199)

Mr. Shaw's medical conditions were monitored beyond 1993. Dr. Martin again examined the claimant in April of 1994 as a follow-up for the polycystic kidney disease and hypertension.

The patient reported feeling well with no chest pain. He did complain of some insomnia and stress because of his son, who was undergoing counseling. The examination and laboratory tests were unremarkable. The physician reported Mr. Shaw's renal condition and hypertension were stable. (EX 6, p. 45).

In July of 1994, Dr. Martin again examined Mr. Shaw regarding his polycystic kidney disease and hypertension. Although there is no other medical evidence in the record regarding this matter, Dr. Martin reported the claimant had recently been stabbed three times but did not suffer any serious wounds. The patient reported there was some back pain, but the physician doubted that it was related to his kidney problem. He also noted that Dr. Lee had reported an elevated ceratinine reading, apparently related to dietary non-compliance, alcohol abuse, salt abuse and smoking. The physician reported the laboratory tests showed a substantial drop in the patient's BUN and ceratinine readings, but he noted that this could be due to bleeding after his wounds. He arranged for a follow-up examination of the claimant for his kidney changes in the following month. (EX 6, p. 46).

Mr. Shaw returned to Dr. Martin in September of 1994. He again reported problems with sleeping and difficulty in stopping his cigarette smoking habit. The physical examination was essentially unremarkable and the physician reported that the lab tests showed slight improvement. He also reported Mr. Shaw's renal function was stable and his blood pressure was under control. (EX 6, p. 47).

Claimant was again examined by Dr. Martin in January of 1995. The patient stated that he had recently been in the emergency room because of back pain associated with some epigastric pain. Mr. Shaw also reported pain localized in the right groin in the same area of his prior cardiac catherization. He also complained of some chest pressure with little benefit from nitroglycerin. The physical examination and laboratory tests were essentially unremarkable, but Dr. Martin ordered x-rays of the claimant's lumbosacral spine, as well as an abdominal and renal ultrasound to evaluate the claimant's back and right groin pain. (EX 6, p. 48).

Mr. Shaw returned to Dr. Martin approximately two weeks later and reported that his right groin pain was better. He also stated that he had reduced his intake of alcohol because the previous laboratory work in the emergency room had sug-

gested pancreatitis. Dr. Martin reported that after a physical examination the patient was moderately tender in the right groin area, but that the laboratory tests were essentially normal, other than an abdominal ultrasound which showed polycystic kidneys with no abnormality in the pancreatic duct or pancreas. The physician reported Mr. Shaw also had a lumbosacral spine series which showed mild degenerative changes of the lumbar spine.

Dr. Martin again examined the claimant on March 8, 1995. Mr. Shaw still complained of some back pain, but that his right groin pain had improved. The examination was essentially unremarkable and the objective tests were essentially normal, other than that an x-ray did show some mild degenerative changes of the lumbar spine. The physician prescribed some medication for gastroesophageal reflux disease. (EX 6, p. 50).

Mr. Shaw again was examined by Dr. Martin in April of the same year. The patient reported that he was doing fairly well other than some complaints of chest heaviness with sharp pain. Again, the physical examination and laboratory results were essentially normal. Dr. Martin reported that from a hypertension and polycystic kidney disease standpoint, Mr. Shaw was doing quite well. He did express some concern about the heaviness in the patient's chest and again suggested that Mr. Shaw take Zantac for this problem. (EX 6, p. 51).

The claimant was treated for gunshot wounds to his hands at the emergency room of MultiCare Medical Center on May 23, 1995. The examining physician recorded patient history of angioplasty, heart attack and significant hypertension, as well as some renal problems associated with this hypertension. Dr. William J. Crabb reported that someone shot at Mr. Shaw's car striking him on the left thumb and the heel of the right hand. X-rays revealed markedly bony abnormality in the thumb, but no bony involvement in the heel of the hand. Attempts to locate a hand surgeon to treat the problem proved unsuccessful and Dr. Jeffrey L. Nacht assumed care for the patient. (EX 5, pp. 43, 44).

Dr. Nacht also noted the claimant's history of coronary artery disease, hypertension, chronic renal failure of a mild degree and liver problems of a chronic nature. His physical examination of the claimant was unremarkable, other than the trauma from the gunshot wounds was noted. He indicated the x-

rays revealed a severe comminuted fracture of the proximal distal flanges and destruction of the IP joint of the left thumb. The patient was taken to the operating room for debridement and formal evaluation of the wounds. (EX 5, pp. 41, 42).

The record also contains evidence that Mr. Shaw received some psychological counseling other than that discussed above regarding 1988. Specifically, notes of a therapist, Mark McNeil, M.A., of Comprehensive Medical Health, document Mr. Shaw's complaints of racism at work and the patient's problems with anger, depression and anxiety in February of 1996. This resulted in a diagnosis of adjustment disorder with mixed anxiety and depression. (CX E1). Mr. Shaw's emotional problems continued into the following month with the claimant still complaining of racism at work, as well as relationship problems with his girlfriend, for which Paxil was prescribed. (EX 2, 3).

Mr. Shaw was hospitalized at Puget Sound Hospital on September 24, 1996 for "chest pressure off and on lasting for several minutes, localized over the precordial area." Pertinent noted history was that claimant's father died of heart disease at age 45 and that his mother died from lupus at age 50. It also was noted that Mr. Shaw had one living brother with lupus and one brother who died from that disease. Pertinent social history included heavy alcohol use for thirty years, reduced to social drinking recently, and thirty years of one pack of cigarettes per day which habit was recently terminated. A physical examination and electrocardiogram were conducted and the patient was admitted to the special care unit for telemetry status to rule out myocardial infarction. The admitting diagnosis was angina syndrome, to rule out myocardial infarction; hyperkalemia; chronic renal failure secondary to polycystic kidney disease; history of myocardial infarction, status post angioplasty; history of peptic ulcer disease; and history of hypertension. (EX 7, pp. 57, 58).

Claimant was next examined by Dr. Martin on November 18, 1996. The physician noted that Mr. Shaw complained that he became ill several months prior to the examination due to hyperkalemia, which had improved. The claimant also advised the physician that he had a full cardiac work-up with Dr. Chung, including a negative thallium scan and negative treadmill stress test. Mr. Shaw reported some edema in the left leg and that he had back pain and some nausea. The physician

also noted that the patient appeared to be “drinking a fair amount and also was smoking” at his last examination in September of 1995, but that Mr. Shaw stated he had stopped using alcohol and quit smoking. The examination was essentially unremarkable other than Dr. Martin increased the claimant’s prescription medication to better control the hypertension. (EX 6, p. 52).

Mr. Shaw returned to Dr. Martin in January of 1997 and indicated that he was doing “fairly well except for episodes of gout in his feet.” He also had some complaints of cramps in his hands and a recent upper respiratory infection. Again, the physical examination produced unremarkable results. Dr. Martin prescribed some medication for gout and the hand cramps. (EX 6, p. 53).

Dr. Timothy K. Chung submitted a letter report dated November 5, 1998 to claimant’s former counsel in response to counsel’s letter in October of that year. In answer to specific questions posed by the attorney, Dr. Chung initially stated that he had first seen Mr. Shaw on July 8, 1993 on a referral from Dr. Lee for the purpose of conducting a cardiology evaluation. The evaluation suggested to the physician that Mr. Shaw probably had the following medical problems regarding his cardiovascular disease: “[c]oronary artery disease with a history of myocardial infarction on May 5, 1993 treated . . . by other physicians and chronic hypertension probably related to congenital polycystic kidney for which the patient has been under the care of a nephrologist.” Dr. Chung reported that since then Mr. Shaw had undergone cardiac catherization and a coronary angiogram in July of 1993 which revealed a high-grade obstruction of 95% of the right coronary artery and minimal 20% stenosis of the left coronary artery. Dr. Chung added that because of the claimant’s significant kidney disease with kidney failure, he did not perform a ventriculogram to avoid contrast injury to the kidney. Angioplasty of the high grade obstruction of the right coronary was recommended on the following day to prevent recurrence of the unstable angina and to minimize the risk of additional myocardial infarction. This was performed without complication and that the patient had been performing well. Dr. Chung went on to state that Mr. Shaw had been followed by him intermittently through June of 1998 with no recurrence of angina pectoris. He also reported that a thallium treadmill test was performed without any angina pectoris and with normal functional aerobic exercise capacity. The results showed no

recurrence of ischemia. Dr. Chung did indicate that based on the myocardial infarction in 1993, the patient needed to be followed regarding his hypertension, kidney disease and coronary artery disease. (EX 11, pp. 74-75).

Dr. Chung went on to also respond that the patient's coronary artery disease is due to atherosclerosis, which might be due to genetic factors, and should not have any direct relationship to his employment duties with the employer. The physician did indicate that the claimant's heavy lifting and working at a fast pace obviously could have been a precipitating event resulting in the myocardial infarction in 1993 because of the patient's underlying coronary artery disease. (EX 11, p. 75).

Regarding a question about the impact of the patient's ability to work due to coronary artery disease, Dr. Chung responded that the claimant "has no myocardial ischemia with normal exercise functional ability and Mr. Shaw can still work provided he is not allowed to lift heavy weight more than he can handle and should not allow him to do extremely strenuous exercises at a fast pace more than what he can handle." He reiterated that the most recent treadmill test showed 100% function with no angina and no signs of ischemia. (EX 11, p. 75).

The physician answered in response to a fourth question that he would not know the exact precipitating event leading to the May 5, 1993 cardiac event because the claimant was under the care of another physician. Finally, regarding the relationship between the claimant's kidney condition and his cardiovascular condition, Dr. Chung answered "that they are interrelated in that the polycystic kidney usually results in hypertension and hypertension is a well known risk factor for developing cardiovascular disease and events including myocardial infarction." He added, however, that "the kidney disease itself has no direct relationship to the cardiac event." (EX 11, p. 76).

By letter dated December 10, 1998, Dr. Martin referred Mr. Shaw to Dr. William H. Marks for kidney transplant evaluation. He reported Mr. Shaw's history of chronic renal failure secondary to adult polycystic kidney disease, but that the claimant's recent ceratinine was elevated, that the patient's course was complicated by anemia and that Mr. Shaw was on ETO therapy. He also related the claimant's problems with hyper-

tension and angina which led to angioplasty and that there was a possible history of pancreatitis. He reported that the claimant was again smoking, that he maintained a very active work schedule at the Port of Tacoma and that he was otherwise doing well. He therefore requested an evaluation of the patient for possible kidney transplant. (EX 10, p. 67).

The record contains a February 3, 1999 nephrologist consultation report from Dr. S. Smiley Thakur of the Swedish Medical Center, Organ Transplant Program, Seattle, Washington. This report contains a comprehensive history of the patient, as well as the results from a physical examination and laboratory studies. The physician then listed ten medical issues which needed to be addressed at the medical conference regarding the treatment of the patient. (EX 10, pp. 68, 69).

On that same date, Dr. Lisa S. Florence, who is the Assistant Program Director of the Swedish Medical Center, Organ Transplant Program, advised Dr. Martin of the consultation of Mr. Shaw for renal transplantation. She related some history pertaining to the claimant's polycystic kidney disease and other medical problems, then noted that she had discussed with the patient some matters that needed to be resolved before they could proceed. Specifically, the physician indicated they would require a recent cardiac catherization for cardiac clearance, that the patient stop smoking cigarettes, and that Mr. Shaw be evaluated by either a colonoscopy or barium enema to assess the degree of diverticulitis disease. Her summarized findings indicated that the patient had a good understanding of the basic transplant issues, but he was not totally convinced that he would like to pursue transplant at that time. She reported that Mr. Shaw understood that he was close to needing hemodialysis and that he would like to pursue this before considering any pre-transplant tests. (EX 10, pp. 68, 69).

Mr. Shaw injured his back in lifting at work on February 16, 1999 and was treated at the Port Clinic, Franciscan Health System, Tacoma, Washington. Acute lumbar sprain was diagnosed and medicine, including Naprosyn, was prescribed. (EX 4, p. 28). He was again examined later that month and was reported to be "doing better" but not ready for full-time work. The physician, K. T. Harmon, M.D., diagnosed cervical and lumbar strains and chronic renal failure/polycystic kidney. (EX 4, p. 29).

Dr. Harmon examined Mr. Shaw again on March 5, 1999. The patient reported some discomfort in his neck and low back, but that he could do light work. Other previous medical problems were raised by Mr. Shaw and the physician apparently discussed these matters to some extent. Dr. Harmon diagnosed slightly improved cervical strain, lumbar strain, chronic renal failure with polycystic kidney disease and hypertension secondary to chronic renal failure. (EX 4, pp. 30, 31).

Dr. Martin indicated in a report dated August 1, 2000 that he had been following Mr. Shaw for end stage renal disease, secondary to adult polycystic kidney disease. He related that the claimant had been on dialysis for approximately 1-1/2 years with treatments of three times a week for four hours. Dr. Martin also reported that the patient has known significant coronary artery disease, intermittent chest pains and shortness of breath. He reported that the patient is frequently fatigued after dialysis and on the following day. Additional conditions affecting the patient were reported to include anemia and hypertension. Dr. Martin opined that the claimant is totally disabled and unable to do any work. (CX L2).

Dr. Sabine von Preyss Friedman reviewed the claimant's medical records dating back to March 15, 1988 and rendered a report on August 15, 2000 pursuant to the request of employer's counsel. After detailing the claimant's medical history, most of which is summarized above, the physician rendered the following internal medicine diagnostic impressions: hypertension; coronary artery disease status post myocardial infarction and successful angioplasty; renal insufficiency, currently apparently on dialysis, secondary to polycystic disease; alcoholism; cigarette smoker of one-half pack per day for 36 years; history of stab and gunshot wounds; ruptured Baker cyst, December 1996; history of gout; anemia, secondary to chronic renal insufficiency and iron deficiency anemia; and, hepatitis B and hepatitis C, positive. He specifically indicated that the claimant's hypertension "on a more probable than not basis" is due to polycystic disease and strong family history and not due to stress. He also attributed the claimant's coronary artery disease to strong family history, hypertension and smoking, also on a more probable than not basis. He added that the renal insufficiency was due to polycystic kidney which is inherited and not due to any employment. The physician concluded that none of Mr. Shaw's diagnoses was related to his occupation with the employer and

again reiterated his opinions regarding the cause of the claimant's hypertension, renal disease and coronary artery disease. (EX 13, pp. 93, 96).

Dr. Peter Mohai also reviewed the medical record pertaining to Mr. Shaw dating back to March 18, 1988. In fact, the evidence reviewed by this physician is more comprehensive than the evidence set forth in this record in that the physician notes that on April 16, 1999, an operative note from St. Joseph Hospital contains post-operative diagnosis of chronic renal failure which required dialysis for the patient. Dr. Mohai testified by deposition regarding his review of the medical evidence on October 3, 2000. After discussing some of his qualifications, which pertinently includes board-certification in internal medicine and rheumatology, Dr. Mohai testified that he has a multi-speciality clinic which occasionally involves the care and treatment of people with coronary artery disease and kidney disease. Based on his review of the claimant's medical records, he listed the diagnoses of Mr. Shaw's conditions, which pertinently include a history of polycystic kidney disease with chronic and progressive renal failure, hypertension and coronary artery disease. Dr. Mohai testified that the claimant's polycystic kidney disease is an inherited form of kidney disease which "often times manifests in middle life and tends to be progressive with a high percentage of those patients going on to full-blown kidney failure." He added that this condition is not related to Mr. Shaw's former employment at Sea-Land because "the condition is an inherited disease and a chronic and progressive disease that's independent of external influences." Regarding Mr. Shaw's heart condition, the physician noted that the claimant had a history of coronary artery disease with cardiac procedures and that he has an enlarged heart which is believed to be related to longstanding hypertensive cardiovascular disease. The physician testified that this condition also is not related to Mr. Shaw's employment at Sea-Land because of the underlying predisposing factors of hypertension and heart disease. Dr. Mohai also testified that the kidney disease is unlikely to be influenced on a significant basis by external factors such as stress. He opined that Mr. Shaw's stress and hypertension is in no way related to his employment. He did add that the claimant's past cardiac catherization in 1993 may have contributed to his kidney failure and that Mr. Shaw's use of Naprosyn had a potential of some additive effect because it is contraindicated in matters involving kidney failure. He stated that he did not know to what degree these factors could

have contributed to his kidney disease and that he could not disagree with the opinions of the treating physicians that the claimant had recovered from the ill effects of the catherization and the treatment for his kidney disease. (EX 14).

Mr. Shaw apparently terminated his employment with Sea-Land on March 6, 1999. (Tr. 84, 88). The record contains no evidence as to amount of wages the claimant was earning either at the time he terminated his employment with Sea-Land or in the 52 weeks preceding his termination. The district director opened the case file relating to OWCP No. 14-130199 on January 8, 1999 and the matter was referred to the Office of Administrative Law Judges on March 1, 2000. (DX H).

Lay Evidence

The record contains Mr. Shaw's complaints of work-related stress due to the pace at work (Tr. 73) and racism at Sea-Land. Regarding racism, he complained that he was under stress from the beginning of his work in 1987 at Sea-Land's Tacoma location and that it was manifested through such things as the theft of tools and equipment, inequitable work assignments and essentially inadequate help or supervision by co-workers. (Tr. 69, 80, 81, 82, 84). He even alleged that the shooting incident in 1995 was work-related. (Tr. 90, 95).

Four witnesses were called to testify by Mr. Shaw to confirm his allegations. This testimony establishes that at times the work pace at Sea-Land is of an "urgent need" in that some of the loading and repair work must be done at a faster pace. (Tr. 17, 52, 59). Some of these workers also confirmed specific actions that took place at Sea-Land which they believe to be racially motivated or discriminatory, but none of these acts was specifically related to Mr. Shaw. (Tr. 21, 22, 48-49, 62, 63).

The record also documents personal problems which Mr. Shaw endured while working for Sea-Land at Tacoma. He apparently had a problem relating to child support in 1988 and he was stabbed by a woman in 1997. (Tr. 93-97). He also had relationship/ emotional problems relating to his girlfriend and his son. (Tr.
110-111; EX 2, 3).

CONCLUSIONS OF LAW

Mr. Shaw seeks various forms of relief for the three claims involved in this proceeding. He initially requests $2,358.96 for the wages he lost from his 30-day leave of absence in 1988 because of stress. He also seeks $15,156.54 for wages he lost as a result of his heart attack from May 1993 until October of that year. His final claim for compensation is for total permanent disability, apparently due to his kidney disease, in an amount to be determined by me. His prayer for relief regarding his medical expenses is threefold. He requests $5,000 for the repayment of costs for medicine, $10,000 for the repayment of costs of medical insurance for 1-1/2 years and $13,000 for doctors' visits between 1993 and the present. He had previously sought a significant amount for pain and suffering, but has apparently withdrawn that request for relief after being advised that the Longshore and Harbor Workers' Compensation Act only provides for compensation for lost wages and reasonable medical expenses associated with work-related injuries.

There are some general legal principles or concepts associated with the Act which should be discussed before addressing the specific claims involved in this case. To prevail, a claimant must initially prove that he has suffered an injury which falls within the jurisdiction of the Act. An "injury" is defined in Section 2(2) of the Act in pertinent part as an "accidental injury . . . arising out of and in the course of employment." 33 U.S.C. § 902(2). For purposes of this case, Mr. Shaw must initially establish a *prima facie* case that he suffered injuries. To do so, he must prove that injuries occurred and that working conditions existed. *Kelaita v. Triple Machine Shop*, 13 BRBS 326, 333-334 (1981); *see also Cairns v. Matson Terminals, Inc*., 21 BRBS 252 (1988).

If a *prima facie* case of injury is established, the claimant is aided by the Section 20(a) presumption that the "injury arose out of and in the course of employment." *Kelaita, supra*. at 329-331; *see also Wheatley v. Adler*, 407 F.2d 307, 312 (D.C. Cir. 1968). The claimant may satisfy a *prima facie* case under Section 20(a) by proving the existence of an injury or harm and that a work-related accident occurred or that working conditions existed which could have caused or aggravated the harm. The Supreme Court has held that a *prima facie* case for compensation must at least allege an injury

that arose in the course of employment, as well as out of employment. *U.S. Indus./Fed. Sheet Metal, Inc. v. Director, Office of Workers' Compensation Programs, U.S. Dep't. of Labor*, 455 U.S. 605, 615, 14 BRBS 631, 633 (CRT) (1982), *rev'g Riley v. U.S. Indus./Fed Sheet Metal, Inc.*, 627 F.2d 455 (D.C. Cir. 1980). Moreover, "the mere existence of a physical impairment is plainly insufficient to shift the burden of proof to the employer." *Id*.

Once a *prima facie* case is established, the burden then shifts to the employer to produce "substantial evidence to rebut the work-relatedness of the injury." *Volpe v. Northeast Marine Terminals, Inc.*, 671 F.2d 697, 700 (2nd Cir. 1982), *citing Del Velcchio v. Bowers*, 296 U.S. 280, 285 (1935). In this context, "substantial evidence" has been held to be "specific and comprehensive evidence sufficient to sever the potential connection between the injury and the employment." *Swinton v. J. Frank Kelly, Inc.*, 554 F.2d 1075, 1083 (D.C. Cir. 1976), *cert. denied*, 429 U.S. 820 (1976). To establish rebuttal of the Section 20(a) presumption, the employer is not required to prove another agency of the causation. *See Stevens v. Todd Pacific Shipyards*, 14 BRBS 626 (1982), *aff'd mem.*, 722 F.2d 747 (9th Cir. 1983), *cert. denied*, 467 U.S. 1243 (1984). In fact, an opinion that no relationship exists between the claimant's work and his disabling condition is sufficient to rebut the Section 20(a) presumption. *See Kier v. Bethlehem Steel Corp.*, 16 BRBS 128 (1984). If the presumption is rebutted, it no longer controls and the record as a whole must be evaluated to determine the issue of causation. *Holmes v. Universal Maritime Serv. Corp.*, 29 BRBS 18 (1995). In other words, all of the evidence must be weighed relevant to the issue of causation. *Sprague v. Director, OWCP*, 688 F.2d 862 (1st Cir. 1982); *MacDonald v. Trailer Marine Transport Corp.*, 18 BRBS 259 (1986).

Assuming a claimant establishes the injury or disability was caused by employment-related duties falling within the jurisdiction of the Longshore and Harbor Workers' Compensation Act, the nature and extent of the disabling condition must be proven. Under the Act, "disability" is defined as the "incapacity because of injury to earn wages which the employee was receiving at the time of injury in the same or other occupation." 33 U.S.C. § 902(10). Generally, disability is addressed in terms of its extent, total or partial, and its

nature, permanent or temporary. A claimant bears the burden of establishing both the nature and extent of his disability. *Eckley v. Fibrex Shipping Co.*, 21 BRBS 120, 122 (1988); *Trask v. Lockheed Shipbuilding & Constr. Co.,* 17 BRBS 56, 59 (1985).

The extent of disability is an economic concept. *See New Orleans (Gulfwide) Stevedores v. Turner*, 661 F.2d 1031, 1038 (5th Cir. 1981); *Quick v. Martin*, 397 F.2d 644, 648 (D.C. Cir. 1968). Thus, in order for a claimant to receive an award of compensation, the evidence must establish that the injury resulted in a loss of wage earning capacity. *See Fleetwood v. Newport News Shipbuilding and Dry Dock Co.*, 776 F.2d 1225, 1229 (4th Cir. 1985); *Sproull v. Stevedoring Servs. of America*, 25 BRBS 100, 110 (1991). A claimant establishes a *prima facie* case of total disability by showing that he cannot perform his usual work because of a work-related injury. Complaints of pain alone may be sufficient to meet this burden. *Anderson v. Todd Shipyards Corp.*, 22 BRBS 20 (1989). Once a *prima facie* case of total disability is established, the burden then shifts to the employer to prove the availability of suitable alternate employment. *See Turner*, 661 F.2d at 1038; *Trans-State Dredging v. Benefits Review Bd. [Tarner]*, 731 F.2d 199, 200-02 (4th Cir. 1984); *Elliott v. C & P Telephone Co.*, 16 BRBS 89, 92 (1984).

The Act provides compensation for total and partial disability. Total disability, which is the subject of these claims, can be found to be either temporary in quality, which means that the claimant has not reached maximum medical improvement from his injuries, and is covered by Section 8(b) of the Act. Total permanent disability of the Act arises when the claimant reaches a level of maximum medical improvement from the injuries and there is no evidence there is suitable alternative employment available to the claimant which he could perform given his limitations because of his injuries. Compensation for permanent total disability is provided by Section 8(a) of the Act. Section 7 of the Act essentially provides that an employer shall furnish reasonable and necessary expenses for a work-related injury for such period as the nature of the injury or the process for recovery may require.

Stress Claim (OWCP No. 14-129483)

Mr. Shaw seeks temporary total disability compensation for his leave of absence from Sea-Land from March 23, 1988 to

April 21, 1988. He contends this loss of wages was due to work-related stress. However, I find the claimant's position is deficient on two grounds. First, there is no reasoned medical evidence proving Mr. Shaw was emotionally afflicted because of stress during this period of time. The longshoreman indeed visited Dr. Wright of Group Health Cooperative on March 22, 1988, but the physician noted that the patient essentially was there because he needed medical verification. Dr. Wright did note that he did not examine the claimant other than to take his blood pressure. He noted "stress, probable work-related", but he provided no rationale for this diagnosis. I find that this is not a reasoned medical report sufficient to prove that the claimant was suffering from the alleged emotional injury.

The second reason Mr. Shaw's position on his stress injury lacks merit is that he has not produced convincing evidence that working conditions existed which could have caused his stress. Mr. Shaw did testify as to problems that he had encountered since starting to work in Tacoma which he perceived to be due to racism. Also, some witnesses subpoenaed by the claimant testified about matters which they believed to be racially motivated at Sea-Land. However, none of these witnesses confirmed that Mr. Shaw was under stress because of racism in 1988 which caused him to seek a leave of absence. On the other hand, employer's counsel pointed out through cross-examination of Mr. Shaw that the claimant was facing some personal problems in 1988 which indeed could have caused his stress. I therefore find that the evidence in this record is not sufficient to prove a *prima facie* case of injury in 1988 to invoke the presumption of Section 20(a) of the Act. I therefore find that Eddie Shaw has failed to meet his burden of proof with respect to his alleged stress injury at Sea-Land in 1988. Thus, this claim for compensation is denied.

Heart Claim (OWCP No. 14-128603)

Mr. Shaw contends he is entitled to temporary total disability compensation from May 5, 1993 to October 1, 1993 due to his heart attack. Unlike his stress-related claim, Mr. Shaw's heart problem while at work does establish a *prima facie* case of injury. The evidentiary record shows that conditions existed at Sea-Land which could have caused the myocardial infarction. Mr. Shaw testified that the work he performed at Sea-Land was at a fast pace and some of the

witnesses confirmed that occasionally there was an "urgent need" to complete their maritime work for Sea-Land. Also, the emergency room note concerning the claimant's heart problems on May 5 indicates that Mr. Shaw was doing heavy lifting of a refrigeration compressor on the docks for Sea-Land at the time he suffered the chest pain. I therefore find that such evidence is sufficient to invoke the Section 20(a) presumption.

I reiterate that with the invocation of the presumption, the burden shifts to Sea-Land to present substantial evidence that the claimant's condition was not caused or aggravated by his employment. *See Brown v. Jacksonville Shipyards, Inc.*, 893 F.2d 294, 23 BRBS 22 (CRT) (11th Cir. 1990); *Manship v. Norfolk & Western Railway Co.*, 30 BRBS 175 (1996). Again, I stress that it is the employer's responsibility on rebuttal to present specific and comprehensive evidence sufficient to sever the causal connection between the injury and the employment. *See Peterson v. General Dynamics Corp.*, 25 BRBS 71 (1991), *aff'd sub nom. Ins. Co. of North America v. U.S. Dep't of Labor*, 969 F.2d 1400, 26 BRBS 14 CRT (2nd Cir. 1992), *cert denied*, 113 S.Ct. 1253 (1993). The testimony of a physician that no relationship exists between the injury and the longshoreman's employment is sufficient to meet the employer's burden under Section 20(a). *See Kier v. Bethlehem Steel Corp.,* 16 BRBS 128 (1984).

Sea-Land produced the opinions of two highly qualified physicians to meet its burden under Section 20(a). Dr. Sabine von Preyss Friedman reviewed the claimant's medical records dating back to 1988. The physician indicated that the claimant's hypertension is due to his polycystic kidney disease and a strong family history. He also indicated that the coronary artery disease is due to "strong family history, hypertension and smoking" on a more probable than not basis. He also indicated that "[n]one of Mr. Shaw's current internal medical diagnoses are related to his occupation with Sea-Land Services as a mechanic." What he did not specifically address, however, is whether the claimant's myocardial infarction on May 5, 1993 was due to or *aggravated* by his duties at Sea-Land on the date of his heart attack.

Dr. Mohai also reviewed the medical records and reached conclusions comparable to those of Dr. Sabine von Preyss Friedman. He testified that Mr. Shaw's heart condition was not related to his employment at Sea-Land as a mechanic,

explaining that heart disease would be in and of itself independent of external conditions because of Mr. Shaw's predisposing factors, such as hypertension. However, Dr. Mohai was not asked, nor did he volunteer, an opinion as to whether the claimant's heart attack on May 5, 1993 was caused or aggravated by the work that he was performing on that date.

Also in the record as an employer's exhibit is the report of Dr. Chung of November 5, 1998, which was rendered in response to questions of claimant's former counsel. Dr. Chung, it must be remembered, is the cardiologist who evaluated the claimant regarding his coronary artery disease and angina pectoris in July of 1993, conducted the heart catherization and angioplasty, then signed the claimant's work release in October of that year. Dr. Chung advised claimant's former counsel that Mr. Shaw's coronary artery disease was due to atherosclerosis, which may be due to genetic factors that have no direct relationship to his employment with Sea-Land. However, Dr. Chung went on to state "with the patient having underlying coronary disease and if the individual has to do heavy lifting and working at a fast pace, it could have been a precipitating event resulting in myocardial infarction in 1993." He added that he did not know whether this event precipitated the heart attack because he was not the physician taking care of Mr. Shaw at that time. Unfortunately, the physician who examined Mr. Shaw during his hospitalization for his heart attack, Dr. Lee, noted the claimant's history of hypertension but did not provide a specific opinion as to whether the myocardial infarction was caused or aggravated by the claimant's duties on the date of the injury.

The medical evidence offered by the employer unequivocally shows that the claimant's heart condition is due to hypertension and longstanding coronary artery disease related to other factors. However, I find such evidence is not sufficient to sever the connection between the claimant's injury on May 5, 1993 and his work with Sea-Land. The employer's evidence simply does not address the specific question of whether the claimant's heart attack on May 5, 1993, rather than his longstanding heart condition, was caused or aggravated by his work at Sea-Land. Without such evidence, I must conclude that this evidence is not sufficient to rebut the Section 20(a) presumption. As in the case of ***Gooden v. Director, OWCP***, 135 F.3d 1066, 1069 (5th Cir. 1998), "the injury for which recovery is sought is the heart attack, not the underlying heart disease." The court went on to explain in that opinion "[i]t is

well settled that a heart attack suffered in the course and scope of employment is compensable even though the employee may have suffered from a related pre-existing heart condition", citing *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962) and *Southern Stevedoring Co. v. Henderson*, 175 F.2d 863 (5th Cir. 1949). The court therefore reversed the administrative law judge's finding regarding causation because the judge had "erroneously focused on the origins of his [claimant's] underlying heart condition, rather than on the ultimate heart attack." *Id*. Thus, I find the employer in this case has not presented sufficient evidence to rebut the Section 20(a) presumption because the opinions of the employer's two experts focus on the cause of the claimant's heart condition, rather than on Mr. Shaw's heart attack.

Since I have concluded that the claimant has established through the Section 20(a) presumption that the myocardial infarction suffered by him on May 5, 1993 was due to his work at Sea-Land, the next question to address is the nature and extent of this disability. The claimant remained off work because of the heart attack and subsequent angioplasty until October 1, 1993. There is no physician's opinion indicating that the claimant reached maximum medical improvement from his heart attack until he was released to return to work by Drs. Martin and Chung. I therefore find that Mr. Shaw's disability was of a temporary nature during the almost five months of work that he lost from Sea-Land because of his heart attack. Thus, compensation for such loss of wages is to be computed under Section 8(b) of the Act.

Kidney Claim (OWCP No. 14-130199)

Mr. Shaw's final claim is for permanent total disability compensation commencing in March of 1999. He contends his employment-related heart attack contributed to, combined with and aggravated his pre-existing or underlying kidney disease. The employer counters that Mr. Shaw's continuing disability due to kidney disease was not caused by his heart attack or the contrast dye used in a cardiac catherization, but is due to his pre-existing renal insufficiency.

Initially, I agree with the employer that the claimant cannot utilize the Section 20(a) presumption to prove the causation of his claimed permanent total disability. It cannot be presumed that the disabling kidney disease is due to

his employment because the requirements necessary to invoke the Section 20(a) presumption are not applicable. Rather, the claimant must prove through the weight of the medical evidence that his disabling kidney disease is due to his employment or was aggravated by employment-related duties. Unfortunately for Mr. Shaw, the weight of the medical evidence does not prove the necessary connection between the kidney disease from which he suffers and his employment.

The record contains a considerable amount of medical evidence relating to Eddie Shaw's continuing problems with his kidney disease. Following his return to work in 1993, Dr. Martin continued to monitor the claimant's polycystic disease and hypertension. Not once did Dr. Martin opine that the claimant's kidney problems were related to his employment with Sea-Land or to the myocardial infarction the claimant suffered while employed with that company. All of the physicians to examine the claimant over the years following his heart attack noted that he suffered from chronic renal failure secondary to polycystic kidney disease, which pre-dated his heart attack. Even Dr. Chung, who evaluated the claimant's heart condition on more than one occasion, indicated that Mr. Shaw's kidney condition and cardiovascular condition were inter-related only because polycystic kidney disease usually results in hypertension and hypertension is a well known factor for developing cardiovascular disease. He added that "the kidney disease itself has no direct relationship to the cardiac event." (EX 11, p. 76). Finally, Dr. Martin indicated in his August 1, 2000 report regarding the claimant's disabling condition that the disability was due to end stage renal disease secondary to adult polycystic kidney disease. Moreover, the two physicians who reviewed the medical record for the employer agreed that Mr. Shaw's renal insufficiency was due to polycystic kidney disease which is not due to any employment but is inherited. Thus, I find that the weight of the evidence is not sufficient to prove that the claimant's disabling kidney disease is related in any way to his employment at Sea-Land.

I should finally note two additional factors which I have considered in reaching my conclusion that the claimant's kidney disease is not related to his employment. First, I note that Mr. Shaw had a worsening of his renal function due to the contrast dye used in his heart catherization in August of 1993. Dr. Martin commented regarding his assessment of this failure that Mr. Shaw was known to have kidney disease and that he had been evaluated in the past for renal failure.

He noted that the patient had a strong history of lupus and that Mr. Shaw's mother was on dialysis secondary to lupus. The physician found that Mr. Shaw did suffer an acute renal failure related to dye exposure following his heart catherization for which Dr. Martin prescribed fluids, medication and treatment during a hospitalization. However, the claimant subsequently was discharged from the hospital and his improving condition was followed by Dr. Martin. Drs. Martin and Chung released the claimant to return to work on October 1, 1993 with no limitations. Dr. Martin indeed reported in April of 1994 that Mr. Shaw's renal condition and hypertension were stable. Thus, this shows that the claimant no longer suffered from renal complications associated with the dye used in the heart catherization. Even Dr. Mohai admitted after his review of the evidence in 2000 that while it may be that the claimant's past cardiac catherization may have contributed to his kidney failure, he could not disagree with the opinions of the treating physicians that the claimant had recovered from the ill effects of that catherization and the treatment of his kidney disease. Therefore, I find the claimant has not met his burden of proving that his continuing disabling kidney disease is related to the treatment surrounding the heart catherization following his heart attack while employed at Sea-Land.

The second factor I should mention is that the claimant suffered a work-related back injury in February of 1999 for which Naprosyn was prescribed. Dr. Mohai testified after reviewing the medical evidence that Mr. Shaw's use of this prescription medication had a potential of some additive effect on his kidney disease because it is contraindicated in matters involving kidney failure. Notwithstanding, the claimant's back injury is not the subject of this proceeding. Regardless of whatever negative effect the use of Naprosyn may have had on the claimant's kidney disease, the use of this prescribed medication is not related to the work-related claims involved in this case.

For the above-stated reasons, I must conclude that the claimant has failed to meet his burden of proving that his continuing disability due to kidney disease is related to his myocardial infarction while working at Sea-Land in 1993 or is related to the cardiac procedures following that incident. Mr. Shaw's claim for continuing permanent total disability due to his kidney disease is denied.

Timeliness of the Claims

Sea-Land contends that all three of the claims of Eddie Shaw that are involved in this proceeding were untimely filed. Section 13 of the Act provides with respect to the time for the filing of claims that:

> . . . [T]he right to compensation for disability . . . under this Act shall be barred unless a claim therefor is filed within one year after the injury. . . . If payment of compensation has been made without an award on account of an injury . . . a claim may be filed within one year after the date of last payment. Such claim shall be filed with the deputy commissioner in the compensation district in which such injury . . . occurred. The time for the filing of a claim shall not begin to run until the employee . . . is aware, or by the exercise of reasonable diligence should have been aware, of the relationship between the injury . . . and the employment.

33 U.S.C. § 913(a).

Unquestionably, Mr. Shaw's claim for compensation relating to his loss of wages in 1988 due to work-related stress was untimely filed since the longshoreman filed this claim for compensation on December 4, 1998. Also, I find Mr. Shaw's failure to file the claim in a timely manner cannot be excused on the grounds that he was not aware of the relationship between his stress injury and his job. Quite the contrary, it has been the claimant's position from the very beginning in 1988 that he should have been paid for this loss of wages because he was unable to work due to stress on the job. While I have concluded that the claimant has not established through competent medical evidence that he suffered an injury at that time and the emotional problem was due to work-related stress, the very medical report on which the claimant relies shows that Mr. Shaw attempted to verify through Dr. White that his loss of wages was due to work-related stress. Since the claimant was never paid for this loss of wages in 1988, despite his arguments that the leave of absence was due to work-related stress, I cannot find that the claimant was not aware of the relationship between his injury and his job so as to delay the filing of his claim for some ten years. Thus, this

claim must also be denied on the basis that it was untimely filed.

I reach the opposite conclusion with respect to the claim filed concerning Mr. Shaw's kidney disease. The record indicates that he terminated his employment with Sea-Land on March 6, 1999. Although the actual claim filed by Mr. Shaw regarding this alleged disability is not a part of the record, the evidence shows that the district director opened the case file pertaining to this claim on January 8, 1999. I therefore find that Mr. Shaw's claim relating to his kidney disease was in accordance with the time limitations of Section 13(a).

Pursuant to Sections 12(b) and 12(c) of the Act, an employee must notify his employer and the deputy commissioner of his injury. The notice must be in writing. 33 U.S.C. §§ 912(b), 912(c). Section 12(a) provides in pertinent part that the notice must be given 30 days after the injury or 30 days after the employee "is aware, or in the exercise of reasonable diligence, or by reason of medical advice should have been aware, of a relationship between the injury or death of the employment." 33 U.S.C. § 912(a); *see also Faulks v. Avondale Shipyards, Inc.*, 637 F.2d 1008, 1012 (5th Cir. 1981).

It is to be presumed under Section 20(b) of the Act that, absent substantial evidence to the contrary, sufficient notice has been provided. *Avondale Shipyards, Inc. v. Vinson*, 623 F.2d 1117, 1120 (5th Cir. 1980); *Shaller v. Cramp Shipbuilding & Drydock Co.*, 23 BRBS 140, 146 (1989). *See also* 33 U.S.C. § 920(b). Moreover, failure to give the notice required by Section 12 does not bar an employee's claim under the Act where the employer has not been prejudiced by the failure. 33 U.S.C. § 912(d)(2); *see also Sheek v. General Dynamics Corp.*, 18 BRBS 151, 154 (1986). Employer has the burden of proving that prejudice has occurred. *Bukovi v. Albine Engine/Dillingham*, 22 BRBS 97, 99 (1988). Sea-Land contends that Mr. Shaw failed to timely notify the employer of his injuries and that such failure prejudiced the employer's ability to respond to the claims.

I find that the medical record is replete with evidence of notification that Mr. Shaw was continuing to experience problems with his kidneys subsequent to his return to work in October of 1993. Moreover, I find that the employer has not demonstrated that it was prejudiced, even if the claimant

failed to formally notify Sea-Land of his medical problems relating to kidney disease. The record indeed contains a wealth of medical evidence relating to the claimant's continuing kidney condition, almost all of which favors Sea-Land's position. Additionally, Sea-Land was able to have the complete evidentiary record reviewed by two highly qualified physicians, both of whom found that Mr. Shaw's kidney condition had no relationship to his employment with Sea-Land. I therefore find that Mr. Shaw's claim with respect to his kidney disease should not be barred under Section 12 of the Act.

Mr. Shaw's claim with respect to his heart attack in 1993 presents a more difficult timeliness issue. Since he did not file with respect to his 1993 myocardial infarction under July 28, 1998, the claim obviously was not timely filed within one year of the injury. However, I believe it is reasonable to conclude that the claimant "by the exercise of reasonable diligence" should not have been aware that his heart attack was related to his job until well after he returned to work. Notwithstanding the liberal causation provisions of Section 20(a) of the Act, the first report in the record indicating that the claimant's heart attack could have been related to his duties at work is Dr. Chung's report on November 5, 1998. The physician indicated at that time that Mr. Shaw's heavy lifting and working at a fast pace at Sea-Land could have been a precipitating event resulting in the heart attack in 1993. Since the report was in response to questions posed by claimant's former counsel, it is reasonable to assume that Mr. Shaw was not aware or should not have been aware of the relationship between his heart attack and his employment until he sought the advice of that attorney. Since his claim was filed on August 20, 1998, which was no more than two months prior to the date on which his former attorney requested the opinion of Dr. Chung, it is reasonable to assume that he was not aware or should not have been aware of the relationship of his heart attack to his employment until about that time. Thus, I find that the time for the filing of the claim relating to Mr. Shaw's heart attack was not untimely under a liberal interpretation of Section 13(a) of the Act.

The employer argues that it was not timely notified of the claimant's position regarding the relationship between his heart attack and work and that he was prejudiced by such a delay. Again, I note that the evidentiary record is replete with evidence relating to the claimant's heart attack, his

heart condition and his continuing kidney condition. Moreover, the employer was able to obtain the medical reports of Dr. Sabine von Preyss Friedman and Dr. Peter Mohai, both of whom were able to perform a comprehensive review of the medical evidence. Additionally, the employer obtained a copy of Dr. Chung's November 1998 report and offered it as an exhibit. I therefore find the employer was not prejudiced by the delay of being notified of the claimant's position with respect to his heart attack, but only failed to rebut the Section 20(a) presumption on causation because the employer's experts addressed only the claimant's underlying risk factors for his coronary condition and did not offer a specific opinion as to whether the claimant's working conditions in May of 1993 caused, contributed or aggravated that heart condition. I therefore find that the employer has not established prejudice within the meaning of Section 12 of the Act. I find that the claim filed by Eddie Shaw with respect to his heart attack in 1993 was timely.

Medical Expenses

Section 7(a) of the Act provides that an employer shall furnish reasonable and necessary medical expenses for an employee for such a period as the nature of the injury or the process of recovery may require. I should stress that medical benefits are not compensation or time-barred under Section 13 of the Act. *Mayfield v. Atlantic & Gulf Stevedores*, 16 BRBS 228 (1984). As with the other issues, it is the claimant's burden of proving the medical expenses for which he is seeking reimbursement.

Obviously, the claimant is not entitled to any medical expenses relating to either his claim for work-related stress in 1998 or his kidney disease claim in 1999 because he has not established that his work at Sea-Land caused the loss of wages due to these conditions. The claimant is entitled under Section 7 to medical expenses relating to the heart attack and treatment that he received regarding that medical condition between May and October of 1993. Unfortunately, the claimant has not provided any evidence of medical expenses he incurred with respect to this work-related injury. Rather, he has generally claimed reimbursement for medicines in the amount of $5,000, medical insurance costs for 1-1/2 years in the amount of $10,000 and co-pays for operations and doctors' visits in the amount of $13,000 from 1993. Such information is not

sufficient to meet the claimant's burden with respect to Section 7(a). I therefore find that the claimant has failed to establish his entitlement to medical expenses relating to his heart attack and treatment between May and October of 1993.

Conclusions

I found the claimant was temporarily totally disabled due to the myocardial infarction that he suffered in May of 1993 and his recuperation until October of that year. The evidence shows that the claimant suffered the heart attack on May 5, 1993 and that he returned to work on October 1, 1993. Therefore, he is entitled to temporary total disability under Section 8(b) from May 5, 1993 to October 1, 1993, computed at 66-2/3 percent of the claimant's average weekly wage. Since the employer conceded that the applicable compensation rate for this period of time was $721.14, I find that the compensation rate is based upon the maximum average weekly wage and maximum compensation rate as determined by the U.S. Department of Labor for the time period between October 1, 1992 and September 30, 1993. *See* 33 U.S.C. § 906 (b)(3).

Perhaps neither party will be satisfied with this decision. I'm sure Mr. Shaw will believe my conclusions regarding his stress and kidney claims are inequitable, given his continuing serious medical condition. On the other hand, my finding regarding the claimant's heart attack may be difficult to accept by Sea-Land. Quite simply, the medical evidence offered by the claimant did not meet his burden of proof regarding the causation of his stress and kidney disease, while the medical opinions developed by the employer regarding Mr. Shaw's heart attack did not focus specifically on the cause of that event. As in most cases arising under the Longshore and Harbor Workers' Compensation Act, the resolution of this case was controlled by the medical evidence.

ORDER

Based on the above findings of fact and conclusions of law, IT IS HEREBY ORDERED that:

1. the claims of Eddie Shaw filed for the stress injury suffered in 1988 while working with Sea-Land (Case No. 1999-LHC-1184 and OWCP No. 14-129483) and his continuing disability claim relating to kidney disease (Case No. 2000-LHC-1395 and OWCP No. 14-130199) resulting in a loss of wages in 1999 are denied;

2. Sea-Land Services, Inc. and its carrier, Crawford & Company, shall provide to Eddie Shaw temporary total disability compensation under Section 8(b) of the Act from May 5, 1993 to October 1, 1993 at the rate of $721.14 per week as a result of the longshoreman's claim relating to the heart attack that he suffered while working at Sea-Land Services, Inc. (Case No. 1999-LHC-1048 and OWCP No. 14-128603);

3. interest shall be paid where applicable at the rate provided under 28 U.S.C. § 1961 with the appropriate rate being determined as of the filing date of this decision with the district director;

4. Mr. Shaw's claims for medical expenses are denied; and,

5. the specific computations of compensation and interest shall be computed by the district director.

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DONALD W. MOSSER
Administrative Law Judge